

BILL ANALYSIS

Senate Research Center

S.B. 507
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State Affairs
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Enrolled

DIGEST AND PURPOSE

Texas, and the nation, have witnessed the explosive growth of homeowners' associations. More than 40 million people today live in one of the more than 200,000 communities managed by homeowners' associations nationwide, an estimated 25 to 30 percent of all homeowners. In Texas, homeowners' associations operate with little statewide regulation or guidance. As a result, as the volunteer boards of these associations work to enforce their deed restrictions, conflicts often arise between the board and association homeowners. Often, these conflicts escalate into legal disputes and in extreme cases can result in home foreclosure. S.B. 507 adds the Texas Residential Property Owners Protection Act to the Texas Property Code, to provide guidelines for the operation of associations as well as specific protections for Texas homeowners living in association-managed communities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 11, Property Code, by adding Chapter 209, as follows:

CHAPTER 209. TEXAS RESIDENTIAL PROPERTY OWNERS PROTECTION ACT

Sec. 209.001. SHORT TITLE. Authorizes this chapter to be cited as the Texas Residential Property Owners Protection Act.

Sec. 209.002. DEFINITIONS. Defines "assessment," "board," "declaration," "dedicatory instrument," "lot," "owner," "property owners' association" or "association," "regular assessment," "residential subdivision," "restrictions," "restrictive covenant," and "special assessment."

Sec. 209.003. APPLICABILITY OF CHAPTER. Provides that this chapter applies only to a residential subdivision that is subject to restrictions or provisions in a declaration that authorize the property owners' association (association) to collect regular or special assessments on all or a majority of the property in the subdivision. Provides that this chapter applies only to an association that requires mandatory membership in the association for all or a majority of the owners of residential property within the subdivision subject to the association's dedicatory instruments. Provides that this chapter applies to a residential property owners' association regardless of whether the entity is designated as a "homeowners' association," "community association," or similar designation in the restrictions or dedicatory instruments. Provides that this chapter does not apply to a condominium development governed by Chapter 82 (Uniform Condominium Act).

Sec. 209.004. MANAGEMENT CERTIFICATES. Requires an association to record in each county in which any portion of the residential subdivision is located a management certificate, signed and acknowledged by an officer or the managing agent of the association, stating certain information. Requires the association to record an amended management certificate not later than the 30th day after the date the association has notice of a change in any information in the recorded certificate required by this section. Provides that the

association and its officers, directors, employees, and agents are not subject to liability to any person for a delay in recording or failure to record a management certificate, unless the delay or failure is wilful or caused by gross negligence.

Sec. 209.005. ASSOCIATION RECORDS. Requires an association to make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, V.T.C.S.). Provides that an attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not records of the association, subject to inspection by the property owner, or subject to production in a legal proceeding.

Sec. 209.006. NOTICE REQUIRED BEFORE ENFORCEMENT ACTION. Requires the association or its agent to give written notice by certified mail, return receipt requested, containing certain information before the association can suspend an owner's right to use a common area; file a suit against an owner other than a suit to foreclose under an association's lien; charge an owner for property damage; or levy a fine for a violation of the restrictions or bylaws or rules of the association.

Sec. 209.007. HEARING BEFORE BOARD; ALTERNATIVE DISPUTE RESOLUTION. Provides that if the property owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the association or before the board if the board does not appoint a committee. Requires the notice prescribed by Section 209.006 to state that the owner has the right to appeal the committee's decision to the board by written notice to the board if a hearing is to be held before a committee. Requires the association to hold a hearing under this section not later than the 30th day after the date the board receives the owner's request for a hearing and requires the notification of the owner of the date, time, and place of the hearing not later than the 10th day before the date of the hearing. Authorizes the board or the owner to request a postponement, and provides that a postponement is required to be granted for a period of not more than 10 days. Authorizes additional postponements to be granted by agreement of the parties. Authorizes the owner or the association to make an audio recording of the meeting. Provides that the notice and hearing provisions of Section 209.006 and this section do not apply if the association files a suit seeking a temporary restraining order or temporary injunctive relief or files a suit that includes foreclosure as a cause of action. Authorizes a party to the suit to file a motion to compel mediation, if a suit is filed relating to a matter to which those sections apply. Provides that the notice and hearing provisions of Section 209.006 and this section do not apply to a temporary suspension of a person's right to use common areas if the temporary suspension is the result of a violation that occurred in a common area and involved a significant and immediate risk of harm to others in the subdivision. Provides that the temporary suspension is effective until the board makes a final determination on the suspension action after following the procedures prescribed by this section. Authorizes an owner or property owners' association to use alternative dispute resolution services.

Sec. 209.008. ATTORNEY'S FEES. Authorizes an association to collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the association relating to collecting amounts, including damages, due the association for enforcing restrictions or the bylaws or rules of the association only if the owner is provided a written notice that attorney's fees and costs will be charged to the owner if the delinquency or violation continues after a date certain. Provides that an owner is not liable for attorney's fees incurred by the association relating to a matter described by the notice under section 209.006 if the attorney's fees are incurred before the conclusion of the hearing under Section 209.007 or, if the owner does not request a hearing under that section, before the date by which the owner must request a hearing. Provides that the owner's presence is not required to hold a hearing under Section 209.007. Requires all attorney's fees, costs, and other amounts collected from an owner to be deposited into an account maintained at a financial institution in the name of the association or its managing agent. Authorizes only members of the association's board or its managing agent or employees of its managing agent to be signatories on the account. Requires the association, on written request from the owner, to

provide copies of invoices for attorney's fees and other costs relating only to the matter for which the association seeks reimbursement of fees and costs. Provides that the notice provisions of this section do not apply to a counterclaim of an association in a lawsuit brought against the association by a property owner. Limits to a certain amount the amount of attorney's fees that a property owners' association, if the dedicatory instrument or restrictions of an association allow for nonjudicial foreclosure, which may be included in a nonjudicial foreclosure sale for an indebtedness covered by an association's assessment lien. Provides that this section does not prevent an association from recovering or collecting attorney's fees in excess of the amounts prescribed by this section by other means provided by law.

Sec. 209.009. FORECLOSURE SALE PROHIBITED IN CERTAIN

CIRCUMSTANCES. Prohibits a property owners' association from foreclosing an association assessment lien if the debt securing the lien consists solely of fines assessed by the association or attorney's fees incurred by the association solely associated with fines assessed by the association.

Sec. 209.010. NOTICE AFTER FORECLOSURE SALE. Requires an association that conducts a foreclosure sale of an owner's lot to send to the lot owner not later than the 30th day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property under Section 209.011. Requires the notice to be sent by certified mail, return receipt requested, to the lot owner's last known mailing address, as reflected in the records of the association. Requires the association to record an affidavit in the real property records of the county in which the lot is located, stating the date on which the notice was sent and containing a legal description of the lot, not later than the 30th day after the date the association sends the required notice. Provides that any person is entitled to rely conclusively on the information contained in the recorded affidavit. Provides that the notice requirements of this section also apply to the sale of an owner's lot by a sheriff or constable conducted as provided by a judgment obtained by the association.

Sec. 209.011. RIGHT OF REDEMPTION AFTER FORECLOSURE. Requires an association or other person who purchases occupied property at a sale foreclosing an association's assessment lien to commence and prosecute a forcible entry and detainer action to recover possession of the property. Authorizes the owner of property in a residential subdivision to redeem the property not later than the 180th day after the date the association mails written notice of the sale to the owner under Section 209.010. Prohibits a person who purchases property at a sale foreclosing an association's assessment lien from transferring ownership of the property to a person other than a redeeming lot owner during the redemption period. Requires the lot owner to pay certain monies to the association and to the person who purchased the property at the foreclosure sale in order to redeem property purchased by a person other than the property owners' association. Requires the purchaser of the property at foreclosure to immediately execute and deliver to the owner a deed transferring the property to the redeeming lot owner, if a lot owner redeems the property under this section. Authorizes the lot owner, if a purchaser fails to comply with this section, to file a cause of action against the purchaser and recover reasonable attorney's fees from the purchaser if the lot owner is the prevailing party in the action. Provides that if, before the expiration of the redemption period, the redeeming lot owner fails to record the deed from the foreclosing purchaser or fails to record an affidavit stating that the lot owner has redeemed the property, the lot owner's right of redemption as against a bona fide purchaser or lender for value expires after the redemption period. Authorizes the purchaser of the property at the foreclosure sale or a person to whom the person who purchased the property at the foreclosure sale transferred the property to presume conclusively that the lot owner did not redeem the property unless the lot owner files certain documents in the real property records of the county in which the property is located. Requires all rent and other income collected by the association from the date of the foreclosure sale to the date of redemption to be credited toward the amount owed the association under this section, if the property owners' association purchases the property at foreclosure; and requires excess proceeds to be refunded to the lot owner. Requires all rent and other income collected by the purchaser from the date of the foreclosure sale to the date of redemption to be credited toward the amount owed the purchaser under this section, if a person other than the association

purchases the property at foreclosure; and requires all proceeds to be refunded to the lot owner.

Requires the purchaser to obtain an affidavit from the association or its authorized agent stating that all amounts owed the association under this section have been paid, if a person other than the property owners' association is the purchaser at the foreclosure sale, before executing a deed transferring the property to the redeeming lot owner. Requires the association to provide the purchaser with the affidavit not later than the 10th day after the date the association receives all amounts owed to the association. Provides that failure of a purchaser to comply with this subsection does not affect the validity of a redemption by a redeeming lot owner. Provides that property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure. Provides that any lease entered into by the purchaser of property at a sale foreclosing an assessment lien of a property owners' association is subject to the right of redemption provided by this section and the lot owner's right to reoccupy the property immediately after the redemption. Requires the association to refund any partial payments to the lot owner by mailing payment to the owner's last known address not later than the 30th day after the expiration date of the redemption period, if a lot owner makes partial payment of amounts due to the association at any time before the redemption period expires but fails to pay all amounts necessary to redeem the property before the redemption period expires. Provides that if a lot owner sends by certified mail, return receipt requested, a written request to redeem the property on or before the last day of the redemption period, the lot owner's right of redemption is extended until the 10th day after the date the association and any third party foreclosure purchaser provides written notice to the lot owner of the amounts that must be paid to redeem the property. Requires the association or third party foreclosure purchaser, after the redemption period and any extended redemption period provided by this section expires, to record an affidavit in the real property records of the county in which the property is located stating that the lot owner did not redeem the property during the redemption period or any extended redemption period. Authorizes the association or the person who purchased the property at the foreclosure sale to file an affidavit in the real property at the foreclosure sale to file an affidavit in the real property records of the county in which the property is located that states the date the citation was served in a suit under this section and contains a legal description of the property. Authorizes any person to rely conclusively on the information contained in the affidavit. Provides that the rights of a lot owner under this section also apply if the sale of the lot owner's property is conducted by a constable or sheriff as provided by a judgment obtained by the association.

SECTION 2. Provides that S.B. 507, 77th Legislature, Regular Session, 2001, is enacted in honor of Wenonah Blevins and may be unofficially referred to as the Wenonah Blevins Residential Property Owners Protection Act.

SECTION 3. Effective date: January 1, 2002.